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formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

§ 39.17 Comparability with public schools.

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 39.78 of these regulations.

§ 39.18 Recomputations of current year entitlements.

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly

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allocated to the schools, and that all funds are fully allotted to schools.

§ 39.19 Phase-in provisions.

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—20%

(2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—10%

(2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

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(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

§ 39.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop:

(a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of boarding schools and in special weighted program areas which expand upon the definitions in this part; and

(b) A uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program.

The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placements can occur before the FY 1981 October student count.

§ 39.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

- (1) A rural isolation adjustment.
- (2) A staff cost adjustment.
- (3) A gifted and talented student program.
- (4) A vocational education program.
- (5) A facilities operation and maintenance program.
- (6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout part 39. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary,

who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

§ 39.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60) days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under 25 CFR part 900 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93-638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 64 FR 13895, Mar. 23, 1999]

§ 39.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under title IV of the Indian Education Act, which are available to contract schools